

SENATE BILL NO. 111

INTRODUCED BY A. ELLIS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SCHOOL BOUNDARY TRANSFERS TO REQUIRE RESTORE CONSTITUTIONALITY TO THE TERRITORY TRANSFER STATUTES BY PROVIDING AN OBJECTIVE PROCESS FOR EFFECTUATING A TRANSFER OF TERRITORY; REQUIRING, IN CERTAIN CASES, APPROVAL BY THE BOARDS OF TRUSTEES OF BOTH THE TRANSFERRING AND RECEIVING SCHOOL DISTRICTS; AMENDING SECTIONS 20-6-213, 20-3-205, 20-6-214, 20-6-308, AND 20-6-320, 20-6-322, MCA; REPEALING SECTIONS 20-6-213, 20-6-215, AND 20-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, CURRENT STATE LAW GRANTS COUNTY SUPERINTENDENTS OF SCHOOLS BROAD DISCRETION TO TRANSFER TERRITORY FROM ONE DISTRICT TO ANOTHER AND TO ALTER SCHOOL DISTRICT BOUNDARIES; AND

WHEREAS, AFTER INTRODUCTION OF THIS BILL, THE MONTANA SUPREME COURT, IN ITS DECISION IN THE CASE OF IN THE PETITION TO TRANSFER TERRITORY FROM HIGH SCHOOL DISTRICT NO. 6, LAME DEER, ROSEBUD COUNTY, MONTANA, TO HIGH SCHOOL DISTRICT NO. 1, HARDIN, MONTANA, 2000 MT 342, 57 ST. REP. 1464 (2000), HELD THAT BECAUSE THE LEGISLATURE HAD NOT PROVIDED COUNTY SUPERINTENDENTS WITH SPECIFIC CRITERIA TO BE WEIGHED WHEN DECIDING TO GRANT OR DENY A TERRITORY TRANSFER PETITION, THE STATE'S STATUTES CONSTITUTED AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. SECTION 1. TRANSFER OF TERRITORY FROM ONE DISTRICT TO ANOTHER. (1) A PETITION TO TRANSFER TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER MAY BE PRESENTED TO THE COUNTY SUPERINTENDENT OF SCHOOLS IF:

(A) THE PETITION IS SIGNED BY TWO-THIRDS OF THE REGISTERED ELECTORS OF THE SCHOOL DISTRICT WHO RESIDE OR OWN TAXABLE REAL PROPERTY IN THE TERRITORY PROPOSED FOR TRANSFER;

(B) THE TERRITORY TO BE TRANSFERRED IS CONTIGUOUS TO THE DISTRICT TO WHICH IT IS TO BE ATTACHED AND

1 INCLUDES CONTIGUOUS TAXABLE PROPERTY;

2 (C) THE TERRITORY TO BE TRANSFERRED IS NOT LOCATED WITHIN 3 MILES, OVER THE SHORTEST PRACTICAL
3 ROUTE, OF AN OPERATING SCHOOL OF THE DISTRICT FROM WHICH IT IS TO BE TRANSFERRED;

4 (D) THE TRANSFER OF TERRITORY WILL NOT, WHEN COMBINED WITH THE CUMULATIVE EFFECT OF OTHER
5 TRANSFERS OF TERRITORY OUT OF THE DISTRICT IN THE PREVIOUS 3 YEARS, REDUCE THE TAXABLE VALUE OF THE DISTRICT
6 FROM WHICH THE TERRITORY IS TO BE TRANSFERRED BY 25% OR MORE FROM THE TAXABLE VALUE PRIOR TO THE
7 TRANSFERS UNLESS THE BOARD OF TRUSTEES OF THAT DISTRICT HAS APPROVED THE PROPOSED TRANSFER BY A
8 RESOLUTION ADOPTED BY A MAJORITY OF THE BOARD MEMBERS AT A MEETING FOR WHICH PROPER NOTICE WAS GIVEN;
9 AND

10 (E) THE BOARD OF TRUSTEES OF THE SCHOOL DISTRICT THAT WOULD RECEIVE THE TERRITORY HAS APPROVED THE
11 PROPOSED TRANSFER BY A RESOLUTION ADOPTED BY A MAJORITY OF THE MEMBERS OF THE BOARD OF TRUSTEES AT A
12 MEETING FOR WHICH PROPER NOTICE WAS GIVEN.

13 (2) ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ONCE A PETITION TO TRANSFER TERRITORY HAS BEEN FILED,
14 AN ADDITIONAL PETITION TO TRANSFER THAT TERRITORY MAY NOT BE FILED FOR 4 YEARS.

15 (3) THE PETITION FOR A TRANSFER OF TERRITORY MUST BE DELIVERED TO THE COUNTY SUPERINTENDENT AND
16 MUST:

17 (A) PROVIDE A LEGAL DESCRIPTION OF THE TERRITORY THAT IS REQUESTED TO BE TRANSFERRED AND A
18 DESCRIPTION OF THE DISTRICT TO WHICH THE TERRITORY IS TO BE TRANSFERRED;

19 (B) STATE THE REASONS WHY THE TRANSFER IS REQUESTED; AND

20 (C) STATE THE NUMBER OF SCHOOL-AGE CHILDREN RESIDING IN THE TERRITORY.

21 (4) THE COUNTY SUPERINTENDENT SHALL GRANT THE REQUESTED TRANSFER OF TERRITORY IF THE BOARD OF
22 TRUSTEES OF THE SCHOOL DISTRICT THAT WOULD RECEIVE THE TERRITORY AND THE BOARD OF TRUSTEES OF THE SCHOOL
23 DISTRICT THAT WOULD TRANSFER THE TERRITORY HAVE APPROVED THE PROPOSED TRANSFER IN WRITING.

24 (5) FOR ANY PETITION THAT MEETS THE CRITERIA SPECIFIED IN SUBSECTION (1) AND CONTAINS THE INFORMATION
25 REQUIRED BY SUBSECTION (3) BUT THAT HAS NOT BEEN APPROVED IN WRITING BY THE BOARD OF TRUSTEES OF THE SCHOOL
26 DISTRICT THAT WOULD TRANSFER THE TERRITORY, THE COUNTY SUPERINTENDENT SHALL:

27 (A) SET A PLACE, DATE, AND TIME FOR A HEARING TO CONSIDER THE PETITION THAT IS NOT MORE THAN 40 DAYS
28 AFTER RECEIPT OF THE PETITION; AND

29 (B) GIVE NOTICE OF THE PLACE, DATE, AND TIME OF THE HEARING. THE NOTICE MUST BE POSTED IN THE
30 DISTRICTS AFFECTED BY THE PETITION FOR THE TRANSFER OF TERRITORY IN THE MANNER PRESCRIBED IN THIS TITLE FOR

1 NOTICES FOR SCHOOL ELECTIONS, WITH AT LEAST ONE NOTICE POSTED IN THE TERRITORY TO BE TRANSFERRED. NOTICE
2 MUST ALSO BE DELIVERED TO THE BOARD OF TRUSTEES OF THE SCHOOL DISTRICT FROM WHICH THE TERRITORY IS TO BE
3 TRANSFERRED.

4 (6) THE COUNTY SUPERINTENDENT SHALL CONDUCT THE HEARING AS SCHEDULED, AND ANY RESIDENT,
5 TAXPAYER, OR REPRESENTATIVE OF THE AFFECTED DISTRICTS MUST, UPON REQUEST, BE HEARD.

6 (7) (A) WITHIN 30 DAYS AFTER THE HEARING, THE COUNTY SUPERINTENDENT SHALL, AFTER CONSIDERING THE
7 TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING, ISSUE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND AN ORDER.
8 THE COUNTY SUPERINTENDENT'S FINDINGS, CONCLUSIONS, AND ORDER MUST INCLUDE A WEIGHING OF THE BENEFICIAL
9 AND HARMFUL EFFECTS ON EDUCATIONAL BENEFITS, BASED ON THE CRITERIA PROVIDED IN SUBSECTION (7)(B), THAT THE
10 TRANSFER WOULD HAVE FOR THOSE RESIDING IN THE TERRITORY PROPOSED FOR TRANSFER AND THOSE RESIDING IN THE
11 REMAINING TERRITORY OF THE DISTRICT AND MUST INCLUDE A DETERMINATION ON WHETHER THE EDUCATIONAL BENEFITS
12 OUTWEIGH THE EDUCATIONAL HARM.

13 (B) IN DETERMINING THE PROPOSED TRANSFER'S BENEFICIAL AND HARMFUL EFFECTS ON EDUCATIONAL BENEFITS,
14 THE COUNTY SUPERINTENDENT SHALL, AT A MINIMUM, CONSIDER:

15 (i) THE ECONOMIC EFFECTS ON EACH DISTRICT;

16 (ii) THE EFFECT ON STUDENTS; AND

17 (iii) THE SOCIAL AND CULTURAL EFFECTS ON EACH DISTRICT.

18 (8) THE DECISION OF THE COUNTY SUPERINTENDENT IS FINAL 30 DAYS AFTER ITS DATE UNLESS IT IS APPEALED
19 TO THE DISTRICT COURT BY A RESIDENT, TAXPAYER, OR REPRESENTATIVE OF EITHER DISTRICT AFFECTED BY THE PETITIONED
20 TERRITORY TRANSFER. THE COUNTY SUPERINTENDENT'S DECISION MUST BE UPHOLD UNLESS THE COURT FINDS THAT THE
21 DECISION CONSTITUTED AN ABUSE OF DISCRETION.

22 (9) WHENEVER A PETITION TO TRANSFER TERRITORY FROM ONE DISTRICT TO ANOTHER DISTRICT CREATES A JOINT
23 DISTRICT OR AFFECTS THE BOUNDARY OF AN EXISTING JOINT DISTRICT, THE PETITION TO TRANSFER TERRITORY MUST BE
24 DELIVERED TO THE COUNTY SUPERINTENDENT OF THE COUNTY IN WHICH THE TERRITORY PROPOSED TO BE TRANSFERRED
25 IS LOCATED. THE COUNTY SUPERINTENDENT SHALL NOTIFY ANY OTHER COUNTY SUPERINTENDENTS OF COUNTIES WITH
26 DISTRICTS AFFECTED BY THE PETITION, AND THE DUTIES PRESCRIBED IN THIS SECTION FOR THE COUNTY SUPERINTENDENT
27 MUST BE PERFORMED JOINTLY. IF THE NUMBER OF COUNTY SUPERINTENDENTS INVOLVED IS AN EVEN NUMBER, THE COUNTY
28 SUPERINTENDENTS SHALL JOINTLY APPOINT AN ADDITIONAL COUNTY SUPERINTENDENT FROM AN UNAFFECTED COUNTY
29 TO JOIN THEM IN CONDUCTING THE HEARING REQUIRED IN SUBSECTION (5) AND IN ISSUING THE DECISION REQUIRED IN
30 SUBSECTION (7). THE DECISION ISSUED UNDER SUBSECTION (7) MUST BE MADE BY A MAJORITY OF THE COUNTY

1 SUPERINTENDENTS.

2 (10) A PETITION SEEKING TO TRANSFER TERRITORY OUT OF OR INTO A K-12 DISTRICT MUST PROPOSE THE
3 TRANSFER OF TERRITORY FOR BOTH ELEMENTARY AND HIGH SCHOOL PURPOSES. IN THE CASE OF A PROPOSED TRANSFER
4 OUT OF OR INTO A K-12 DISTRICT, A PETITION THAT FAILS TO PROPOSE THE TRANSFER OF TERRITORY FOR BOTH
5 ELEMENTARY AND HIGH SCHOOL PURPOSES IS INVALID FOR THE PURPOSE OF THIS SECTION.

6

7 **SECTION 2.** SECTION 20-3-205, MCA, IS AMENDED TO READ:

8 **"20-3-205. Powers and duties.** The county superintendent has general supervision of the schools
9 of the county within the limitations prescribed by this title and shall perform the following duties or acts:

10 (1) determine, establish, and reestablish trustee nominating districts in accordance with the
11 provisions of 20-3-352, 20-3-353, and 20-3-354;

12 (2) administer and file the oaths of members of the boards of trustees of the districts in the county
13 in accordance with the provisions of 20-3-307;

14 (3) register the teacher or specialist certificates or emergency authorization of employment of any
15 person employed in the county as a teacher, specialist, principal, or district superintendent in accordance
16 with the provisions of 20-4-202;

17 (4) act on each tuition and transportation obligation submitted in accordance with the provisions
18 of 20-5-323 and 20-5-324;

19 (5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

20 (6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

21 (7) keep a transcript ~~and reconcile~~ of the district boundaries of the county ~~in accordance with the~~
22 ~~provisions of 20-6-103;~~

23 (8) fulfill all responsibilities assigned under the provisions of this title regulating the organization,
24 alteration, or abandonment of districts;

25 (9) act on any unification proposition and, if approved, establish additional trustee nominating
26 districts in accordance with 20-6-312 and 20-6-313;

27 (10) estimate the average number belonging (ANB) of an opening school in accordance with the
28 provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

29 (11) process and, when required, act on school isolation applications in accordance with the
30 provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-335, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and, subject to 15-10-420, compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents

1 applicable to the administration of the office, and surrender all records, books, supplies, and equipment
2 to the next superintendent;

3 (25) within 90 days after the close of the school fiscal year, publish an annual report in the county
4 newspaper stating the following financial information for the school fiscal year just ended for each district
5 of the county:

6 (a) the total of the cash balances of all funds maintained by the district at the beginning of the
7 year;

8 (b) the total receipts that were realized in each fund maintained by the district;

9 (c) the total expenditures that were made from each fund maintained by the district; and

10 (d) the total of the cash balances of all funds maintained by the district at the end of the school
11 fiscal year; and

12 (26) hold meetings for the members of the trustees from time to time at which matters for the
13 good of the districts must be discussed."

14

15 **SECTION 3. SECTION 20-6-214, MCA, IS AMENDED TO READ:**

16 **"20-6-214. Boundary adjustments in elementary school districts.** The trustees of an elementary
17 school district may, by resolution, request a change in the boundaries between their district and an
18 adjacent district. The resolution ~~shall~~ must be addressed to the county superintendent of schools who,
19 upon receiving ~~such~~ a resolution, shall proceed as set forth in ~~20-6-213~~ [section 1]."

20

21 **SECTION 4. SECTION 20-6-308, MCA, IS AMENDED TO READ:**

22 **"20-6-308. Limitations for organization of joint high school district.** The boundaries of ~~any~~ a high
23 school district ~~which~~ that encompass a county's portion of a joint elementary district where an elementary
24 school is operated may be changed to establish a joint high school district. ~~Such~~ The high school district
25 boundary change ~~shall~~ must be a transfer of all the territory located in another county's portion of the
26 same joint elementary district. ~~No such~~ A boundary change ~~shall~~ may not be made when:

27 (1) the territory transfer would reduce the taxable value of the taxable property of another high
28 school district to less than \$1 million; ~~or~~

29 (2) a portion of the territory to be transferred is less than 3 miles from an operating accredited
30 high school located in another high school district; or

(3) the proposed transfer violates the provisions in [section 1]."

SECTION 5. SECTION 20-6-322, MCA, IS AMENDED TO READ:

"20-6-322. Boundary adjustments in high school districts. The trustees of a high school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution must be addressed to the county superintendent of schools who, upon receiving a resolution, shall proceed as provided in ~~20-6-320~~ [section 1]."

NEW SECTION. SECTION 6. REPEALER. SECTIONS 20-6-213, 20-6-215, AND 20-6-320, MCA, ARE REPEALED.

NEW SECTION. SECTION 7. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 20, CHAPTER 6, PART 1, AND THE PROVISIONS OF TITLE 20, CHAPTER 6, PART 1, APPLY TO [SECTION 1].

NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 9. EFFECTIVE DATE -- APPLICABILITY. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL AND APPLIES TO SCHOOL TERRITORY TRANSFER PROCEEDINGS THAT BEGIN ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT]. [THIS ACT] DOES NOT APPLY TO SCHOOL TERRITORY TRANSFER PROCEEDINGS THAT WERE COMMENCED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] OR THAT ARE THE SUBJECT OF PENDING OR CURRENT LITIGATION ON [THE EFFECTIVE DATE OF THIS ACT].

- END -